

TITLE 89: SOCIAL SERVICES
CHAPTER I: DEPARTMENT OF HEALTHCARE AND FAMILY SERVICES
SUBCHAPTER d: MEDICAL PROGRAMS

PART 145
MENTAL HEALTH SERVICES IN NURSING FACILITIES

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SUBPART A: DEMONSTRATION PROJECT FOR MENTAL HEALTH SERVICES IN NURSING FACILITIES

Section 145.10 General Provisions

- a) This Section is promulgated to establish a demonstration project for nursing facilities that primarily serve persons with severe mental illness. The Department intends to evaluate the results of the demonstration project at the end of three years. General applicability of the provisions of this Subpart will depend upon the findings of the evaluation. It is the Department's intent to make the project a standard category of service after reviewing the results of the evaluation. Section 1905(a)(16) and Section 1905(a)(27)(b) of the Social Security Act provide that federal financial participation (FFP) is not available for medical assistance under Title XIX for services provided to any individual who is under 65 years of age and who is a resident in an institution for mental diseases (IMD) unless the payment is for inpatient psychiatric services for individuals under 21 years of age. In some Illinois nursing facilities, a very high proportion of residents are not elderly and have a severe mental illness. The purpose of the demonstration project is to allow nursing facilities to specialize in the treatment of persons with severe mental illness and focus their resources on providing psychiatric rehabilitation services rather than on meeting requirements designed primarily for elderly and medically impaired residents. The demonstration project will focus upon evaluating standards and payment methods specific to the needs of facilities specializing in serving persons with mental illness. The facilities in the demonstration project will serve as sites for examining service models appropriate for the mentally ill population in a long term care setting. They will also serve as sites for comparing costs for the numbers and credentials of staff appropriate for the physically, medically ill population. The cost information evaluated from the demonstration project will be used by the Department to develop a payment rule for services provided by a nursing facility to residents who have a serious mental illness as required by 305 ILCS 5/5-5.5(d). The demonstration project shall be in effect until June 30, 2007. The Department shall evaluate the demonstration project and report to the Illinois General Assembly regarding its findings and recommendations by December 31, 2004.
- b) For the purposes of this Part, "severe mental illness" is defined as the presence of a major disorder as classified in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) (American Psychiatric Association, 1400 K Street NW, Washington DC 20005 (Fourth Printing, 1998, no later amendments or editions included)), excluding alcohol and substance abuse, Alzheimer's disease, and other forms of dementia based upon organic or physical disorders. A severe mental illness is determined by all of the following three areas:

- 1) Diagnoses that constitute a severe mental illness are:
 - A) Schizophrenia,
 - B) Delusional disorder,
 - C) Schizo-affective disorder,
 - D) Psychotic disorder not otherwise specified,
 - E) Bipolar disorder I - mixed, manic, and depressed,
 - F) Bipolar disorder II,
 - G) Cyclothymic disorder,
 - H) Bipolar disorder not otherwise specified,
 - I) Major Depression, recurrent,
 - J) Psychotic disorder, not otherwise specified.
- 2) In addition, the individual must be 18 years of age or older and be substantially functionally limited by mental illness in at least two of the following areas:
 - A) Self-maintenance,
 - B) Social functioning,
 - C) Community living activities,
 - D) Work related skills.
- 3) Finally, the disability must be of an extended duration, expected to be present for at least a year, that results in a substantial limitation in major life activities. These individuals will typically also have one of the following characteristics:
 - A) Have experienced two or more psychiatric hospitalizations;

- B) Receive Social Security Income (SSI) or Social Security Disability Income (SSDI) due to mental illness or have been deemed eligible for it.
- c) In order to be eligible to enter the demonstration project, a nursing facility must meet each of the following criteria:
 - 1) Ninety percent or more of the residents have a diagnosis of severe mental illness;
 - 2) No more than 15 percent of the residents are 65 years of age or older;
 - 3) None of the residents has a primary diagnosis of moderate, severe, or profound mental retardation;
 - 4) None of the residents requires medical or nursing care at a level higher than the intermediate nursing care light level of care as defined in 77 Ill. Adm. Code 300.1230(n); and
 - 5) The facility must be in good standing with the Departments of Healthcare and Family Services and Public Health.
- d) Nursing facilities that meet the criteria set forth in subsection (c) of this Section may apply to the Department to be considered for participation in the demonstration project. In selecting facilities for the demonstration project, the Department shall consider other factors beyond the criteria in subsection (c) of this Section such as, but not limited to, the facility's history of compliance with all applicable State and federal standards and the effect of lost federal funds associated with withdrawal from certification. The Department will enter into provider agreements with those facilities selected for the demonstration project. No more than 12 facilities shall be admitted to the demonstration project.
- e) Nursing facilities participating in the demonstration project must comply with the standards set forth in 77 Ill. Adm. Code 300.6000 through 300.6095. Based on a finding of noncompliance by the Department of Public Health on the part of a nursing facility participating in the demonstration project with any requirement set forth in 77 Ill. Adm. Code 300.6000 through 300.6095, the Department may impose sanctions as set forth in 89 Ill. Adm. Code 147.301 after notice to the facility.

- f) Notwithstanding any other provisions contained in the Administrative Code requiring certification of nursing facilities, nursing facilities participating in the demonstration project are not required to be certified for Title XIX participation in order to enroll for participation in the Medical Assistance Program or to receive payment for services.
- g) The Department shall not pay for any new admissions to the nursing facilities participating in the demonstration project of residents who:
 - 1) Are age 60 years or older;
 - 2) Do not have a severe mental illness as determined by the State's mental health pre-admission screening program; or
 - 3) Require medical or nursing care at a level higher than the intermediate nursing care light level of care as defined in 77 Ill. Adm. Code 300.1230(n).
- h) The Departments of Healthcare and Family Services and Public Health, and the Department of Human Services-Division of Mental Health, shall have the right of entry and inspection of any nursing facilities participating in the demonstration project to determine success and utility of the demonstration project.
- i) The Department shall provide technical assistance to nursing facilities participating in the demonstration project to assist them in meeting the standards set forth in 77 Ill. Adm. Code 300.6000 through 300.6095.

(Source: Amended at 29 Ill. Reg. 18906, effective November 4, 2005)

SUBPART B: INSTITUTION FOR MENTAL DISEASES PROVISIONS FOR NURSING FACILITIES

Section 145.20 General Provisions

Sections 1905(a)(16) and 905(a)(27)(B) of the Social Security Act provide that federal financial participation (FFP) is not available for any medical assistance under Title XIX for services provided to any individual who is older than 21 years of age and under 65 years of age and who is a patient in an IMD. The purpose of this Subpart B is to set forth the process by which the Department shall identify nursing facilities that are IMDs or that are at risk of becoming IMDs, the preventive measures to be taken to avoid classification of a nursing facility as an IMD, and the actions to be taken if a facility is identified as an IMD.

Section 145.30 Definitions

For purposes of this Part, the following terms shall be defined as follows:

“IMD” means a nursing facility that is considered to be an Institution for Mental Diseases (IMD) under Section 1905 (i) of the Social Security Act (42 USC 1396d(i)). Federal regulations provide that: An IMD is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. An IMD has an overall character of a facility established and maintained primarily for the care and treatment of individuals with mental diseases. An institution for the mentally retarded (ICF/MR) is not an IMD (see 42 CFR 435.1009).

“Class I IMD” means a nursing facility determined to be an IMD during the initial review conducted pursuant to Section 145.40.

“Class II IMD” means a nursing facility determined to be an IMD in a subsequent review conducted pursuant to Section 145.50.

“IMD Guidelines” means the Guidelines in Section 4390 of the Health Care Financing Administration State Medicaid Manual relating to Institutions for Mental Diseases (Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore MD 21244-1850 (1994, no later amendments or editions included)). Criteria used in determining whether the overall character of a facility is that of an IMD include whether the current need for institutionalization for more than 50 percent of all the patients in the facility results from mental diseases and whether the facility specializes in providing psychiatric/psychological care and treatment.

“Mental Disease” means mental disease or mental illness as defined in the IMD Guidelines. Mental disease includes those diseases listed as mental disorders in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (Centers for Disease Control and Prevention, National Center for Health Statistics, 6525 Belcrest Rd., Hyattsville MD 20782-2003 (2000, no later amendments or editions included)), with the exception of mental retardation, senility and organic brain syndrome. “Current need for nursing facility care results from mental disease” means that a review of the resident’s diagnoses, the character and nature of his or her problems, functional status, and his or her care needs indicates that the resident’s need for nursing facility care results from his or her mental disease and not a physical or medical reason.

Section 145.40 Initial IMD Review, Determination and Classification of Facilities

- a) An initial review of data on nursing facility residents in enrolled nursing facilities shall be conducted by the Department. The initial data review shall be based on Minimum Data Set data electronically submitted to the Department on nursing facility residents who are residents of the facility as of March 1, 2001. Based on the review, a determination shall be made of the number of residents whose current need for nursing facility care results from mental disease. The facility's total resident census shall be determined by the Department at the time of the data review.
- b) The percentage of residents whose current need for nursing facility care results from mental disease will be determined by dividing the number of the residents whose current need for nursing facility care results from mental disease, identified in the data review in subsection (a) of this Section, by the total resident census.
- c) If the initial data review of a facility indicates that further information is needed in order to determine whether the current need for nursing facility care for more than 50 percent of all residents in the facility results from mental diseases, the Department may contact the facility or make an on-site visit to obtain additional information. The Department will verify the resident count and make a determination of the facility's IMD status based on the IMD Guidelines.
- d) If a facility is determined to be an IMD during the initial review and determination, the Department shall notify the facility that it has been identified as a Class I IMD nursing facility.
- e) A facility that is classified as a Class I IMD nursing facility in accordance with the review and determination process in this Section shall receive the Class I IMD per diem reimbursement rate as stipulated in Section 145.80(a).
- f) A change in ownership or operator shall not change or otherwise affect the designation of a facility as an IMD under this Section.
- g) A Class I IMD facility that no longer meets the definition of an IMD shall relinquish its Class I IMD classification and may not again be classified as a Class I IMD.

Section 145.50 Subsequent IMD Reviews, Determinations and Classifications

- a) Subsequent reviews of data on nursing facility residents in enrolled nursing facilities shall be conducted periodically using the Minimum Data Set data electronically submitted to the Department.
- b) The percentage of residents whose current need for nursing facility care results from mental disease will be determined by dividing the number of the residents whose current need for nursing facility care results from mental disease, identified in the data review in subsection (a) of this Section, by the total resident census. The facility's total resident census shall be determined by the Department at the time of the data review.
- c) If a subsequent data review indicates that further information is needed in order to determine whether the current need for nursing facility care for more than 50 percent of all residents in the facility results from mental diseases, the Department may contact the facility or make an on-site visit to obtain additional information. The Department will verify the resident count and make a determination of the facility's status based on the IMD Guidelines.
- d) Within 45 days after the on-site visit, the Department shall determine whether the facility is an IMD and notify the facility of its IMD status.
- e) A facility determined to be an IMD as the result of a subsequent data review and determination shall be classified as a Class II IMD nursing facility effective the first day of the quarter after the determination. A change in ownership or operator shall not change or otherwise affect the designation of a facility as an IMD under this Section.
- f) No facility may be classified as a Class I IMD nursing facility as a result of a subsequent review under this Section.

Section 145.60 Effect of Becoming a Class II IMD and Redetermination Reviews

- a) A facility that is classified as a Class II IMD nursing facility in accordance with the review and determination process in Section 145.50 shall receive the Class II IMD per diem reimbursement rate as stipulated in Section 145.80(b).
- b) The Class II IMD rate shall be effective on the first day of the quarter after the Department makes its determination that a facility is a Class II IMD.
- c) If requested by a Class II IMD nursing facility, the Department shall make a redetermination of a facility's status as an IMD by conducting a resident data review and on-site visit of the facility.
- d) If the Department determines that the facility is not an IMD as the result of a redetermination review, the facility shall be reclassified to non-IMD status effective the first day of the month following the redetermination review.

Section 145.70 Watch List of Nursing Facilities at Risk of Becoming IMDs

- a) If the initial, subsequent or any other Department data reviews indicate that the current need for nursing facility care for 40 percent or more of the residents residing in the facility results from mental disease, the Department shall notify the facility that it is at risk of becoming an IMD, advise the facility of the consequences of becoming an IMD, and place the facility on an “at risk” list. The Department may conduct an on-site review of an “at risk” facility at any time.
- b) The Department shall notify the State mental health authority when a facility is at risk of becoming an IMD.

Section 145.80 Reimbursement Rate for IMD Nursing Facility Classifications

- a) **Reimbursement Rate for Class I IMD Nursing Facilities**
A facility classified under Section 145.40 shall have its per diem reimbursement rate for all residents set at the reimbursement rate that would otherwise be determined under the Department's administrative rules located at 89 Ill. Adm. Code 140, 147 and 153 for long term care services provided by nursing facilities that are not IMDs.
- b) **Reimbursement Rate for Class II IMD Nursing Facilities**
 - 1) A facility classified as a Class II IMD pursuant to Section 145.50 shall have its per diem reimbursement rate for residents who are 22 through 64 years of age set at one-half of the reimbursement rate that would otherwise be determined under Department rules for long term care services provided by nursing facilities that are not IMDs.
 - 2) The per diem reimbursement rate for residents 21 years of age or younger and residents 65 years of age or older shall be set at the reimbursement rate that would otherwise be determined under Department rules for long term care services provided by nursing facilities that are not IMDs.

Section 145.90 Reviews

- a) Upon notification that it has been determined to be a Class II IMD, either as the result of a subsequent review pursuant to Section 145.50 or a redetermination review pursuant to Section 145.60(c), a facility may request a review of the Department's determination. Such a request must be submitted in writing and received by the Department within 30 days after the date of the Department's notice to the facility that it has been determined to be an IMD. Such a request shall include a clear explanation and supporting documentation of the facility's basis for considering the Department's determination that it is an IMD to be in error. Department review shall be limited to the Department's:
 - 1) calculation of the percentage of persons whose mental disease is the reason for being in the facility; and
 - 2) determination of those residents who are counted in arriving at the number of persons whose mental disease is the reason for being in the facility and the number of residents who have a physical or medical reason for being in the facility.
- b) The Department shall complete its review and issue a final determination of a facility's request for review unless the Department in the course of its review determines that an on-site visit is needed. Upon the request of the Department, a facility may submit further documentation to the Department in support of its request for review during the course of the Department's review. Department review shall not delay implementation of a facility's reimbursement rate pursuant to Section 145.80 (b).